S.B. Civil Misc. Application No.56/2006

Smt. Shanti Devi and others.
vs.
Smt. Kanchan Devi and another.

Date : 13.10.2006

HON'BLE MR. PRAKASH TATIA, J.

Mr. SL Jain, for the applicants.
Mr. SD Vyas a/w Mr.MS Purohit, for the respondents.

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Heard learned counsel for the parties.

This Court while dismissing SBC Second Appeal No.471/2005, granted some time to the applicants/appellants to vacate the suit premises in its judgment dated 9.5.2006. The appellants were directed to submit a undertaking before the trial court within a period of one month from the date of order and pay all the arrears of rent and decreetal amount within a period of two months from the date of order before the trial court. The appellants were directed to pay monthly rent by 15th day of each succeeding month of their tenancy by depositing it in the trial court.

According to the appellants/applicants, they submitted undertaking but of one of the applicant only before the trial court and that too after delay on 15.6.2006 in place of by or before 9.6.2006. According to learned counsel for

the applicants, the applicants also submitted an application on 15.6.2006 for deposit of arrears of rent. However, said application was dismissed by the trial court vide order dated 17.7.2006 holding that the plea taken by the appellants that they received certified copy of High Court's order late i.e. On 25.5.2006 is one aspect of the matter but the appellants themselves did not submit undertaking of all the appellants nor paid the arrears of rent. It would be worthwhile to mention here that this order was passed on 17.7.2006 which is one month of the appellants' submitting undertaking of one of the appellant. Even by that time, the appellants did not submit the undertaking of the remaining appellants. Not only this, the appellants did not deposit even the arrears of rent and decreetal amount in time. In the application dated 15.6.2006, copy of which has been shown by learned counsel for the appellants today, there is no reason given for not depositing the arrears of rent and decreetal amount in the trial court within time. Virtually, there is no explanation for not submitting the undertaking of one of the appellants and non-deposit of the rent. The court could have taken a liberal view but after the order dated 17.7.2006 the present application for extension of time was submitted when the police reached the spot pursuant to the execution proceedings already filed by the decree holder for taking possession and the process of taking possession was going on. At the request of the appellants, the matter was taken up on the same day and this Court ordered that in case, the possession has not been taken by the decree holder by that

time, then the possession shall not be taken from the appellants/tenants. The order was passed at 12:30 PM. It was made clear that the order will be made effective when it is communicated to the executing court, decree holder through their counsel and Sale Amin by way of affidavit of any of the appellants.

As per the Sale Amin's report, copy of which has been placed on record by the non-applicants/landlords, the process of taking possession started at 11:30 AM and as per the order dated 17.7.2006 passed on the appellants' application, this information was furnished to the court by learned counsel for the appellants. As per the Sale Amin's report, all the goods were removed from the shop and at about 1:46 PM, a fax message was received and proceedings got stopped at that time.

According to learned counsel for the appellants, before 1:46 PM, he submitted an affidavit before the Court and communicated about the stay order.

As per the report of the process server, the appellants/applicants have been dispossessed and their goods were removed.

In view of the above, I do not find any reason to extend the time for furnishing the undertaking and for payment of arrears of rent and decreetal amount when the tenants/applicants lost their possession and they were not

vigilant enough to the indulgence shown by this Court while dismissing the second appeal.

Consequently, this application for extension of time is hereby dismissed and the executing court may now deliver the possession to the decree holder.

(PRAKASH TATIA), J.

S.Phophaliya